

EDU #5172-01
C # 388-01
EDU #8322-01
C # 254-02R
SB # 33-02

E.M.M.A., on behalf of minor children, M.A. AND H.A.,	:	STATE BOARD OF EDUCATION
	:	
PETITIONER-APPELLANT,	:	DECISION
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF UNION, UNION COUNTY,	:	
	:	
RESPONDENT-RESPONDENT.	:	

Remanded by the Commissioner of Education, October 15, 2001

Decided by the Commissioner of Education, July 26, 2002

For the Petitioner-Appellant, E.M.M.A., pro se

For the Respondent-Respondent, Lum, Danzis, Drasco, Positan &
Kleinberg, L.L.C. (Joseph M. Wenzel, Esq., of Counsel)

E.M.M.A. (hereinafter "petitioner") filed a petition with the Commissioner of Education challenging the determination by the Board of Education of the Township of Union (hereinafter "Board") that his two children were not entitled to a free public education in the district. The petitioner's children had attended school in the district

from May 2 until May 9, 2001. The Board filed a counterclaim seeking tuition for the period of the children's attendance.

On August 28, 2001, an Administrative Law Judge ("ALJ") recommended dismissing the petition as a result of the petitioner's failure to appear at the hearing. He also recommended granting the Board's claim for tuition. On October 15, 2002, the Commissioner adopted the ALJ's recommendation to dismiss the petitioner's claim. However, finding that there was a factual dispute with regard to the exact dates of the petitioner's children's attendance in the district, the Commissioner remanded this matter to the Office of Administrative Law for further proceedings on the Board's counterclaim in order to calculate the amount of tuition owed. The petitioner did not file an appeal from that decision.

During the proceedings on remand, the petitioner testified that he had gone to his children's school on May 9, 2001 and told the principal that they would no longer be attending classes there. Initial Decision, slip op. at 4. His children did not attend school in the district after that date, and, in fact, the family relocated to Niskayuna, New York. Id. The Board's only witness, the district's Residency Coordinator, testified that the petitioner's children were carried on the district's rolls until May 29 "due to the fact there was a State requirement that children are not to be dropped from the rolls because of nonattendance until at least 10 school days have passed in that status. Moreover, as far as she knew, there were no records indicating that a written notice had ever been given by petitioner regarding withdrawal of the children from the school district. Thus, they were required to be kept on the rolls at least until the last school day in May." Id.

On May 10, 2002, the ALJ, citing N.J.A.C. 6:3-9.3(i),¹ concluded “that there was no act on the part of petitioner on May 9, 2001 which could constitute a circumstance tantamount to the children ‘officially’ leaving the school system.” Id. at 5. The ALJ observed that the petitioner:

gave no written notice then, or at any subsequent time, to confirm that his children had been withdrawn and would not be returning to the Hannah Caldwell School. Indeed, absent such notification, he was perfectly free to have them return to class at any time. Oral notice of withdrawal, even accompanied by physical withdrawal, is not enough.

Id.

The ALJ therefore recommended that the petitioner reimburse the Board for tuition in the amount of \$1,278, representing his children’s attendance for a period of 18 school days between May 2 and May 29, 2001.

On June 27, 2002, the Commissioner adopted the ALJ’s recommendations and directed the petitioner to reimburse the Board for \$1,278. In so doing, the Commissioner stressed “that his determination is based on the particular facts of this matter, and that he makes no general holding on the manner by which withdrawal from school may be effectuated.” Commissioner’s Decision, slip op. at 9.

The petitioner filed the instant appeal to the State Board.

¹ N.J.A.C. 6:3-9.3, “School attendance,” provides in pertinent part:

(i) A pupil shall be recorded as either present, absent, or excused for religious observance, every day the school is in session after the pupil enters until the date the pupil is transferred to another school, transferred to an individual home instruction record, or officially leaves the school system.

After a thorough review of the record,² we reverse the Commissioner's determination that the petitioner is responsible for tuition through May 29, 2001. Instead, we conclude that the petitioner's responsibility for tuition is limited to the period from May 2, 2001 until May 9, 2001, when he informed the principal of his children's withdrawal.

We observe initially that the regulation relied upon by the ALJ and the Commissioner, N.J.A.C. 6:3-9.3(i), was adopted to ensure compliance with the compulsory attendance requirement, which is currently set forth in N.J.S.A. 18A:38-25 et seq.³ It does not prescribe any requirements for withdrawing a student from a school district. Nor does it address the course of action required to "officially" leave a district.

In this case, the petitioner testified without contradiction that he had notified the principal of his children's school on May 9, 2001 that he was withdrawing them from the district. Initial Decision, slip op. at 4.⁴ There is no indication in the record before us that the principal informed the petitioner that it was necessary to put his notice into writing or that he was otherwise required to take any further action in order to effectuate the withdrawal. Under these circumstances, and in the absence of a specific dictate in statute or regulation requiring that notice of withdrawal be in written form, we find that the petitioner's verbal communication to the principal on May 9, 2001 was sufficient for

² Like the Commissioner, we were not provided with a copy of the transcripts from the hearing held in the Office of Administrative Law. We note, in addition, that the Board did not file an answer brief on appeal. Consequently, we have considered this matter on the basis of the record certified to us by the Commissioner, N.J.A.C. 6A:4-1.8, and the appeal brief filed by the petitioner. N.J.A.C. 6A:4-1.12(b).

³ N.J.S.A. 18A:38-25 provides in pertinent part:

Every parent, guardian or other person having custody and control of a child between the ages of six and 16 years shall cause such child regularly to attend the public schools of the district....

⁴ It is uncontroverted that the petitioner's children did not attend school in the district after that date.

the purpose of putting the district on notice of the fact that his children were being withdrawn from the school system.

Accordingly, we conclude that the petitioner is responsible for tuition only for the period from May 2 until May 9, 2001. The record indicates that the tuition rate charged by the district was \$32 per day for the petitioner's child in kindergarten and \$39 per day for his child in first grade. Since the petitioner's children were enrolled in the district for six school days prior to withdrawal, tuition for each child would be \$192 (\$32 for six days) and \$234 (\$39 for six days) respectively, for a total of \$426.

John A. Griffith abstained.

February 5, 2003

Date of mailing _____